

Supreme Court of the
United States

JUN 24 1976

MICHAEL NOOK, JR., CLERK

Supreme Court of the United States

October Term, 1975

No. 75-1716

NORMAN F. BLANCHARD, *et al.*,
Petitioners,

vs.

ROLLA R. JOHNSON, *et al.*,
Respondents,

and

MARINE ENGINEERS BENEFICIAL ASSOCIATION,
ASSOCIATED MARITIME OFFICERS, AFL-CIO,
Applicants for Intervention.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION

ROBERT T. ROSENFELD

SANFORD GROSS

ROSENFELD & GROSS

727 National City E. 6th Bldg.
Cleveland, Ohio 44114

Counsel for Respondents

TABLE OF CONTENTS

Question Presented	1
Statement of the Case	2
Introduction	2
Background	3
Raiding by MEBA	4
Affiliation With the ILA	5
First Referendum on Affiliation With ILA	6
June 14 and June 18 Hearing	6
Second Referendum	7
July 1, 1974 Hearing	7
Third Referendum	8
Argument Against Granting the Writ	9
Conclusion	11

TABLE OF AUTHORITIES

Cases

<i>Allen v. International Alliance of Theatrical Employees</i> , 338 F.2d 309 (5th Circuit, 1964)	10
<i>Calhoon v. Harvey</i> , 379 U.S. 134 (1964)	9
<i>Gurton v. Arons</i> , 339 F.2d 371 (2nd Circuit, 1964)	10
<i>Madden v. Marine Engineers Beneficial Association</i> , 46 LC §17,863 (D.C. So. Ill., 1962)	3
<i>Musicians Federation v. Wittstein</i> , 379 U.S. 171 (1964)	10
<i>Sheldon v. O'Callighan</i> , 497 F.2d 1276 (2nd Circuit, 1974)	10
<i>Smith v. United Mine Workers</i> , 493 F.2d 1241 (10th Circuit, 1974)	10

Statutes**Labor Management Reporting and Disclosure Act
of 1959:**

29 USC 3(i)	3
29 USC 101(a)	2
29 USC 401	2
29 USC 411	2
29 USC 501	2

National Labor Relations Act:

29 USC 152(5)	3
29 USC 152(11)	4

Supreme Court of the United States**October Term, 1975****No. 75-1716**

NORMAN F. BLANCHARD, et al.,
Petitioners,

vs.

ROLLA R. JOHNSON, et al.,
Respondents,

and

MARINE ENGINEERS BENEFICIAL ASSOCIATION,
ASSOCIATED MARITIME OFFICERS, AFL-CIO,
Applicants for Intervention.

**ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

BRIEF OF RESPONDENTS IN OPPOSITION**QUESTION PRESENTED**

Contrary to the Petitioners, Respondent believes that the issue presented is as follows:

Where Respondent Labor Union, through its governing body, has sought out and agreed to affiliate with another labor union, which affiliation must be ratified by the membership of Respondent, and where a stranger rival union has made an unsolicited offer of affiliation, which offer is in good faith rejected by the governing body of Respondent union, do the

provisions of the Labor Management Reporting and Disclosure Act of 1959, 29 USC §§401, 501 require that the rejected offer must also be presented in a referendum?

STATEMENT OF THE CASE

Introduction

This case, involving Titles I and V of the Labor Management Reporting and Disclosure Act of 1959 (LMRDA), originated in the District Court of the Northern District of Ohio, Western Division, before the Honorable Judge Nicholas Walinski, upon the Complaint and Motion for Preliminary Injunction and Motion for Temporary Restraining Order filed by three members of Respondent Great Lakes and Rivers District, Local 47—Masters, Mates and Pilots (Local 47). Petitioners allege violation by Respondent of rights conferred on them by §101(a) and §501 of the Act, 29 USC §§411, 501, in the conduct of a referendum by Respondent. The individual Respondents are or were officers or members of the Executive Board of Local 47. Both Local 47 and District 2, Marine Engineers Beneficial Association, Associated Maritime Officers, AFL-CIO (MEBA) are labor organizations within the meaning of LMRDA.

Petitioners are seeking to enjoin a referendum among all the members of Local 47 by which the Executive Board is carrying out the mandate of its constitution, which requires that any proposal for affiliation with another national or international union which has been approved by the Executive Board must then be submitted to the entire membership for ratification

or rejection. The Board has approved an affiliation with the International Longshoremen's Association, AFL-CIO (ILA), which is the subject of the referendum, and rejected an affiliation proposal by MEBA. Petitioners are supporters of MEBA. The Court enjoined the conducting of any referendum unless the plan therefor was approved by the Court. The Court has approved a plan, but in so doing, granted the motion of MEBA to appear on the referendum ballot, contrary to the wishes of the governing body of Local 47. Respondent appealed the granting of this motion, which appeal was granted by the Appellate Court, and the District Court's decision reversed in that respect. Petitioner seeks review of that decision.

Background

Local 47 is a labor organization of about 550 members which admits to membership only supervising deck officers and captains of various ships, tugs, etc., operating generally on the Great Lakes and inland rivers (Local 47 Constitution, Art. IV, §§1-4, A.125).¹ Because of the limitation on membership to supervisors, Local 47 is not a labor organization within the meaning of the National Labor Relations Act, 1947, 29 USC §152(5), but is, as noted above, covered by §3(i) of LMRDA. MEBA is also a labor organization of supervisors (engineering officers), but not exclusively so² and is affiliated with the parent Marine Engineers Beneficial Association, AFL-CIO.

1. References to the Appendix Volume I shall be shown as (A.125). References to the Appendix Volume II shall be shown as (A.II:18).

2. *Madden v. Marine Engineers Beneficial Association*, 46 LC §17,863 (D.C. So. Ill., 1962).

The government of Local 47 is composed of one paid staff member who is the President (A.116)³ and an Executive Board of seven Vice-Presidents representing the various geographical areas covered by the Union (Local 47 Constitution, Art. V, §2). An annual convention is held in March and officers are nominated by the convention delegates, but elected by mail ballot by all the members, this taking place each three years (Local 47 Constitution, Arts. IX, XIV).

Raiding by MEBA

In April, 1974, MEBA attempted to induce various members of Local 47, including the Petitioners herein, who were employed by fleet owners under established collective bargaining contracts with Local 47, to give up their membership in Local 47 and join MEBA (A.162-165; A.II:22-23). This "raiding" activity centered around the Great Lakes fleets of U.S. Steel, Bethlehem and International Harvester, all of which were under contract with Local 47 at the time—U.S. Steel since 1956 (A.51-52, 165). These three fleets comprise about twenty-five percent of the membership of Local 47 (A.157). This raiding activity culminated on April 29, 1974 in MEBA claiming that it, not Local 47, represented a majority of the deck officers in each of the three fleets (A.II:11-12, 24). As a result of these demands, the three fleet owners forced Local 47 to participate in private elections⁴ to determine

3. At (A.125) Captain Johnson testified that both he and Duff were full-time paid staff members. Since that hearing date, Captain Johnson did not run for re-election and there is now only one full-time staff position.

4. Because all of the employees involved were supervisors within the meaning of 29 USC §152(11), the National Labor Relations Board had no jurisdiction to conduct the election.

which Union, if any, would represent their officers (A.II:11-12, 26-29; A.137-138). Local 47 attempted to block the elections by filing for an injunction in Common Pleas Court in Cleveland, Ohio (A.II:35-38), in order to gain time to invoke the provisions of Article XX of the International AFL-CIO Constitution (A.II:30-34), which provision covers raiding between AFL-CIO affiliates. At the Common Pleas Court hearing, MEBA was represented by Mr. Lackey, Petitioners' counsel herein. By agreement, the action was dismissed after certain changes in the election procedure were effected (A.II:8-9).⁵

Affiliation With the ILA

Local 47 had previously been affiliated with the International Organization, Masters, Mates and Pilots (IOMM&P), but disaffiliated when it threatened to take away the autonomy of Local 47 (A.126, 127, 137). Subsequently, the International affiliated with the ILA as the Marine Division (ILA Constitution, Art. XXVII; A.II:13). When merger proposals from MEBA were rejected by Local 47, the latter knew it would be in a fight and need help (A.130-131). It sought the ILA because the ILA would grant an autonomous charter and could invoke the provisions of Article XX of the AFL-CIO Constitution, the Settlement of Internal Disputes Plan (A.II:30-34; A.137). The principal reason for the merger was to obtain this protection umbrella and therefore non-AFL-CIO affiliates, such as the Teamsters, could not seriously be

5. After close of hearings in this matter, the elections were concluded: Local 47 retained the right to represent the mates at U.S. Steel, 59 to 40 (3 votes "no union"), but lost to District 2 at Bethlehem 6 to 10 (3 votes "no union"), and International Harvester 0 to 3.

considered (A.137). Finally, in mid-May, 1974, agreement between President Gleason of the ILA and Captain Johnson of Local 47 was reached and reduced to writing (A.II:2-5). Pursuant to the Constitution of Local 47, the approval of the Executive Board was sought and obtained (A.II:13-17). Following this, a membership referendum had to be conducted in accordance with Local 47 Constitution, Article XXIII, §3.

First Referendum on Affiliation With ILA

On May 24, 1974, a mail ballot referendum (A.16-19) was conducted by Local 47. In the ballots mailed to members under the U.S. Steel, Bethlehem and International Harvester contracts, there was also a strike ballot, since contract negotiations were approaching (A.135). In order to determine the trend of both the strike vote and affiliation referendum, ballots were opened in bunches, without waiting for the end of the voting period (June 24). The ballots were opened in such a way as to preserve the secrecy of the ballot and no attempt was made to learn how any individual voted (A.33, 113-116, 135-136). Within a few days after the Common Pleas Court hearing, MEBA representatives found several of its supporters in the ranks of Local 47 and took them to its attorney, Mr. Lackey, who then filed for an injunction in Federal Court in Toledo in order to block the referendum, claiming *inter alia* that the balloting was not, in fact, a secret ballot (A.66-68, 70, 74-76, 27-29).

June 14 and June 18 Hearing

At the conclusion of the hearing, the Court issued its order, finding, in essence, that the balloting was not, in fact, secret, and impounded the ballots. The

Court went on to hold, "The Court is not enjoining any referendum but will leave the Executive Board free to follow the Constitution in conducting a secret ballot election with adequate information as to the advantages and disadvantages of any affiliation with the ILA." (A.33). On the record, the Court clarified "advantages and disadvantages" by saying it means "terms" (A.176). In an off-the-record discussion in chambers, the question of mailing out the ILA Constitution was brought up and was found by the Court at that time not to be necessary.

Second Referendum

Immediately after the Court hearing and ruling of June 18, a new plan of referendum to conform to the Court's order was prepared. Time was still of the essence and it was intended that the ballots would go out on the nineteenth of June. After a conversation with Petitioners' counsel, the mailing of the ballots was delayed one day to permit Petitioners to bring in any literature they may have wanted to distribute to the membership, and a Judge was designated the election umpire to supervise the mailing, retention and counting of the ballots, to comply with Petitioners' request to insure the secrecy of the ballot (A.195-198). Ballots were ultimately mailed on July 20 in accordance with the plan (A.II:40-47).

July 1, 1974 Hearing

Petitioners filed a Motion for a Temporary Restraining Order on June 19, claiming basically that insufficient notice and information was being given to the membership and members could not have access

to the mailing list to send out opposing views (A.39-40). The Court issued its order July 5, enjoining the conduct of the second referendum and any future referendum unless approved by the Court. The Court went on to hold, "No such plan will be approved unless it contains, at a minimum, adequate safeguards for the secrecy of the ballot, full disclosure of all the terms of all affiliation proposals, as well as copies of the constitution of the organization with which affiliation is to be considered and voted upon, and access to the mailing list of defendant Local 47 by all members in sufficient time to express their views before a vote is to begin." (A.200-211).

A motion to modify the Court's July 5 order was filed by Respondents (A.212) which was denied (A.214-215). The thrust of the Motion to Modify was that the Court's order would seem to require a referendum on all or any proposal, no matter how specious, whereas the Constitution would require a referendum only on the proposals approved by the Executive Board (Local 47 Constitution, Art. XXIII, §3). The Court, however, held that its order "does not require the union executive board to submit *all* affiliation proposals to the membership for a referendum." (A.215). But the Court went on to hold that it would not hesitate to enjoin the use of the union constitution to avoid a referendum on a merger proposal which may be arguably to the benefit of the union (A.215).

Third Referendum

MEBA, by telegram (A.222-223) on September 13, 1974, requested Captain Johnson to form a committee to meet with MEBA to explore a merger or affiliation proposal. On October 4 the offer was de-

clined by the Executive Board because MEBA was still raiding established bargaining relationships of Local 47 (A.224). On November 11, 1974, MEBA made a formal proposal for affiliation (A.225-228).

On December 3, an informal hearing was conducted by the Court in chambers to approve a plan (A.231-237) for the third referendum which would conform to the Court's July 5 order. At the hearing, MEBA, without prior notice to Respondents, appeared at the hearing, moved to intervene in the proceedings, and moved to have its proposal placed on the ballot for affiliation (A.216-220). Over the very strong objection of Respondents, the Court granted MEBA's motion to have its offer placed on the referendum ballot, while denying its motion to intervene. The Court also approved the proposed plan with a few modifications with which Respondents do not take issue (A.228-230). Respondents appealed the granting of MEBA's motion and the Circuit Court agreed with Respondents' position and reversed the District Court's order. Respondents did not take issue with any other portion of the District Court's order. Petitioners now seek review of the Circuit Court's decision.

ARGUMENT AGAINST GRANTING THE WRIT

Contrary to the Petitioners' statements, the law in this area is well settled. As long as the rules and regulations of a labor union are reasonable and lawful and not in violation of the LMRDA and if the union officials follow the provisions of the by-laws and Constitution, there can be neither an infringement upon the rights of the members nor a breach of the fiduciary duty owed to those members by the officers. *Calhoon v. Harvey*, 379 U.S. 134 (1964). This was clearly set forth in the deci-

sion below by the Circuit Court and there has been no showing by Petitioners that the complained of constitutional provision is either unreasonable or unlawful. As stated by Judge Breitenstein in *Smith v. United Mine Workers*, 493 F.2d 1241 (10th Circuit, 1974),

"The attack of the plaintiffs can go only to the reasonableness of the pertinent constitutional provision . . . LMRDA is remedial legislation and as such should be liberally construed. [Citation omitted]. It does not, however, purport to project absolute judicial control over the internal management of unions. [Citation omitted]. The rights granted by the Act are specific. Congress did not intend that the Act be an invitation to the courts to intervene at will in the internal affairs of union. [Citation omitted]. There is no allegation and no proof that the constitutional provision before us is unfair or unreasonable or that it has been applied discriminatorily. [Citation omitted]."

See also *Sheldon v. O'Callighan*, 497 F.2d 1276 (2nd Circuit, 1974), *Allen v. International Alliance of Theatrical Employees*, 338 F.2d 309 (5th Circuit, 1964) and *Gurton v. Arons*, 339 F.2d 371 (2nd Circuit, 1964).

The Petitioners would claim that review of this case is essential in order to preserve the right of the Union members to fully and actively participate in the affairs of the Union. However, this Court in *Musicians Federation v. Wittstein*, 379 U.S. 171 (1964) stated that it was not necessary "to have each union member make decisions in detail as in a New England town meeting. What is required is the opportunity to influence policy and leadership by free and periodic elections." It should be noted that one year after Petitioners filed the original

complaint in Court and blanketed the membership with substantial publicity regarding the Court's decisions to that date, Petitioner Blanchard ran against Respondent Duff for the office of President of the Union. His campaign was in no small measure based upon the arguments contained in Petitioners' Brief. On May 30, 1975, Duff was elected President by a vote of 221 to 113, this by a secret mail ballot election among all members. Thus, the membership has had the opportunity to speak regarding the way it feels its policies are being carried out by the leadership it has elected.

CONCLUSION

It is respectfully submitted that the Court of Appeals' decision in this case is a sound, well-reasoned opinion which follows the clear dictates of the law as laid down by both Congress and this honorable Court and the decision should neither be reviewed nor reversed.

Respectfully submitted,

ROBERT T. ROSENFELD
SANFORD GROSS
ROSENFELD & GROSS

727 National City E. 6th Bldg.
Cleveland, Ohio 44114
Counsel for Respondents